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In the Supreme Court of the United States

OCTOBER TERM, 1961

CHARLES COLLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The per curiam opinions of the court of appeals (Pet. App. 4, 6) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on November 9, 1960. A petition for a rehearing was denied (with an opinion) on July 19, 1961 (Pet. App. 6). The petition for a writ of certiorari was

filed on August 18, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the conviction.

2. Whether the trial court erred in permitting petitioner to testify for the limited purpose of supporting a motion to suppress, and in questioning him with respect to his testimony on that issue.

STATEMENT

Petitioner and six others were indicted in the United States District Court for the Southern District of Florida for conspiring to export munitions of war without a license, in violation of 22 U.S.C. 1934, and to bribe a federal officer, in violation of 18 U.S.C. 201 (R. 2-5). After a waiver of trial by jury, petitioner was tried and found guilty by the court (R. 10, 294-295). He was sentenced to imprisonment for three years (R. 11-12). The court of appeals affirmed *per curiam*.

1. The government's principal evidence consisted of the testimony of Liquori, a co-conspirator, and Shanley, a federal customs agent who had accepted money from the conspirators, pretending to cooperate with their plan surreptitiously to ship arms to the Dominican Republic.

In the early months of 1959, Liquori, a Miami policeman assigned to guard the Dominican Consulate in Miami, agreed with Dominican officials to procure

arms for shipment to their country. Together with Leonard Trento, whom he had met through the Dominican consul, Liquori sought United States clearance to ship the arms. When such clearance was denied, Liquori and the consul decided to go ahead with the shipment in any event (R. 169-174). To accomplish this purpose, Trento and another sought to make a "deal" with Shanley, a local federal customs agent (R. 25-35, 177).

In late March 1959, Liquori gave Trento a deposit of $1,000 and then met him in New York, where Trento said he could get arms. The following day, Trento set out, without Liquori, to get in touch with petitioner, an arms dealer in New Jersey. Liquori gave Trento $13,000 to buy 100 machine guns which Trento said he would purchase from petitioner (R. 174-180). During the first week of April, Trento delivered to Liquori, in Miami, 25 machine guns which were stored in the garage at the Dominican consulate (R. 180-181).

On April 15th, petitioner, in Miami, appeared at the Dominican consulate, introduced himself to Liquori and the Dominican consul, and told him that he wanted more money to continue the purchase of arms, explaining that he had put a deposit on ammunition in California. The consul gave $9,000 to Liquori who gave it to Trento who, in turn, after deducting expenses and other fees, paid petitioner $7,600 (R. 181-183).

In the meantime, two local customs agents, Shanley and another, had ostensibly agreed to help Trento and his associates get the munitions out of the coun-

try. It was understood that the agents were to have complete control of shipments arriving in Miami and that they were to receive twenty percent of the value of munitions exported under their "protection" (R. 32-35). On May 6th, the agents, upon the insistence of Liquori, accepted $200 each, as a regular monthly retainer (R. 36).

On May 7th, Shanley and his fellow agent who had heard petitioner's name mentioned as an arms supplier (R. 36) discovered eight boxes on the premises of the Miami airport, all bearing petitioner's name as sender. Two of the boxes were addressed to Liquori and six to petitioner. The agents, keeping the boxes under surveillance, saw Trento and Liquori pick up two of the boxes. Two hours later, petitioner appeared, markedly nervous, and had the remaining six boxes loaded in a truck driven by Trento. The agents followed the truck on a devious route through the city. After petitioner had left the truck, the agents stopped it. Trento explained to Shanley that the failure to notify him of this shipment had been a "slip-up". The agents took the boxes, which contained 21 sub-machine guns, 37 rifles, and various replacement parts, to Shanley's garage (R. 42 47, 52). Later that afternoon, petitioner appeared at Shanley's house and accused him of hijacking his legal shipment (R. 47-53).

The following day, petitioner, who had registered at a Miami hotel under an assumed name, met with Shanley to have a friendly discussion (R. 54). At this time, petitioner told Shanley that he now understood everything that was involved (R. 83), that the

plan suited him fine, and that he wanted to cooperate (R. 54-55).

During subsequent meetings, held frequently over the next few days with Shanley and others, petitioner spoke about the truck of ammunition he was momentarily expecting from California, future shipments, and the destination of the arms (R. 56-67, 83). Shortly thereafter, petitioner told Shanley that he could not wait in Miami for the truck from California but that he was leaving money for freight charges and had arranged for the freight to be released to Trento (R. 66, 72). On May 18th, Trento cashed petitioner's check for $840 at the Dominican consulate. In a rented truck, Trento and Shanley drove to a trucking depot where they picked up 116 cases containing 200,000 rounds of ammunition which had been purchased by petitioner (R. 72-73, 187-188). The following day, the Dominican consul paid Shanley and his fellow agent $1,000 (R. 75).

During the following days, Shanley discussed with Trento, Liquori, and others a plan for getting the munitions out of the country by aircraft (R. 77-78). On May 22nd, as the arms were being loaded on a plane at Miami's airport, other customs agents arrested Trento, Liquori, and others (R. 78, 79). Petitioner was subsequently arrested.

2. When the government, at the close of its case, offered its various exhibits for admission into evidence, petitioner objected to the admission of a list of, and samples of, the rifles and machine guns which agent Shanley had taken, on May 7, 1959, from the truck driven by Trento. He asserted that

the weapons had been seized unlawfully, not pursuant to a warrant or incident to a legal arrest (R. 247-248). The court reminded defense counsel that petitioner, in order to have standing to object to the seizure of the guns, must have had some interest in the property (R. 250). Asked if any balance was due to petitioner on the shipment, defense counsel replied in the negative but argued that the procurement of guns and the ammunition later coming into Miami from California was part of the whole transaction upon which a balance was due (R. 251). Thereupon the court asked if the defense would want to offer evidence on this. Defense counsel replied in the negative, saying that he thought there was sufficient evidence to sustain the motion (R. 252). The court continued (R. 252-253):

> I want the record to show the defendant may take the stand now in support of his motion without testifying generally to the case if he wishes to do so. I will hear the motion now, if you want to offer anything in support * * *
>
> * * * *
>
> Do you wish to offer evidence at this time?

Defense counsel replied in the affirmative (R. 253).

Thereafter petitioner testified that he had brought into Miami, as one transaction, the cases of guns arriving on May 7th and the truck load of ammunition arriving subsequently, and that a balance was due on the total transaction (R. 253-254). When, on cross-examination, petitioner made vague statements as to his monetary transactions (R. 259), the court took over the questioning to ask for precise figures as to prices, receipts, balances, deposits, and

expenses incurred in the purchase and sale of the arms (R. 259-270). The court also asked petitioner about the delivery of the guns. After petitioner admitted that he had turned over possession of the guns to Trento before they were taken by Shanley (R. 271-282), the court denied the motion to exclude the evidence (R. 282).

ARGUMENT

1. There is plainly no merit in petitioner's contention that the court erred in denying his motion for a judgment of acquittal at the conclusion of the government's case. The evidence indisputably showed the existence of a conspiracy to ship arms to a foreign country in knowing violation of law, as well as a conspiracy to bribe customs agents. The testimony of agent Shanley and conspirator Liquori conclusively established petitioner as the supplier of the arms. That petitioner knew of the destination of the munitions (and the illegality of the plan) was shown by the testimony as to his numerous conversations with the conspirators, and by his appearance at the Dominican consulate where he collected over $7,000 (*supra*, p. 3, 4-5).

2. The obvious answer to petitioner's contention that the court erred in requiring him to take the stand is that the court did not require him to do so. Rather, the court permitted him to take the stand, if he chose to do so, with the privilege of not testifying generally, but only in support of his belated motion to suppress. Defense counsel specifically indi-

cated that petitioner wished to offer evidence on this motion, and petitioner's subsequent testimony was voluntarily given.

The court's questioning of petitioner at this time went only to the issue which his motion to suppress raised and upon which his direct testimony on that motion did not throw sufficient light—that is, whether he had sufficient interest in the guns to have standing to object to their seizure. The questions were limited to inquiries regarding the delivery of the guns and the financial arrangements for the sale of these guns and the ammunition which petitioner had testified were part of one transaction. These inquiries were proper on the issue of standing, and petitioner has no cause for complaint.

3. Petitioner's allusion in his petition in this Court (Pet. 4) to a magazine article, purportedly describing the government's evidence prior to trial, needs little comment. It does not appear that the matter was ever urged at the trial; and it was not urged below. Petitioner does not now aver in what way he could have been prejudiced; he does not even assert that the trial court, which adjudicated his guilt, was ever aware of the article.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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